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Reply to Office Action of August 10, 2005

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REMARKS

In the Office Action of August 10, 2005, Examiner rejected claims 1-9 under 35 U.S.C. § 103(a) as being unpatentable over "U.S. Patent No. 6,055,561" to Ohba et al. ("Ohba"). Applicant notes that U.S. Patent No. 6,055,561 is a patent issued to Feldman et al., which reference is noted in the Notice Of References Cited. From the Notice of References Cited, Applicant notes that Ohba is in fact U.S. Publication No. 2002/0176370. As Examiner's comments appear to be directed to this latter reference of U.S. Publication No. 2002/0176370, Applicant assumes Examiner's rejection is based on Ohba.

The Examiner further rejected claim 10 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,751,741 to Fourcand et al. ("Fourcand"), and claim 11 as being unpatentable over Fourcand under 35 U.S.C § 103(a). Other objections to the specification and claim 8 were made in the Action. Applicant herein first address the § 102 and 103 rejections.

35 U.S.C. § 102 and 103

Applicant herein cancels claims 10 and 11, hence rendering the rejections to such claims moot.

Applicant respectfully submits that claims 1 to 9 are not obvious in view of Ohba. Taking for example amended claim 1, Applicant's claimed invention is directed to a method of attempting to establish a connection path between first and second nodes in a communications network. The method includes attempting to establish the connection after a period of time has elapsed which is based on a previous interval of delay between two previous attempts, and which the period of time is greater than the previous interval of delay. In effect, the claimed invention utilizes historical timing data of previous connection attempts to determine a next connection attempt.

Ohba does not teach this feature of Applicant's claimed invention. Ohba is understood to describe label switched path loop detection methods at nodes of a communication network. Ohba at page 8, paragraphs 121-122 describes that a node that detects a path loop is to carry out

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a procedure for re-transmitting a label allocation message after a set period of time repeatedly until the number of retransmissions exceed a threshold, at which time Ohba regards a label allocation failure message to have been returned. Ohba does not teach or suggest the claimed feature of attempting to establish a connection after a period of time has elapsed which is based on a previous interval of delay between two previous attempts, and which the period of time is greater than the previous interval of delay. Rather Ohba describes using an abstract pre-set delay that is fixed and does not change in view of previous attempts. Thus, the claimed invention provides a time-based "back-off" mechanism for increasing the elapsed period of time between connection attempts, which mechanism is neither taught nor suggested by Ohba.

Additionally, Applicant respectfully disagrees with Examiner's characterization that "it would have been obvious to attempt to establish a connection after a greater period of time...[since] a greater length of time between the unsuccessful attempts will utilize *system resources more efficiently*" [emphasis added]. Examiner recognizes that more efficient usage of system resources may be obtained by way of Applicant's system as compared to the prior art. However, an advantageous technical advance described in an Applicant's application cannot serve as a guide to a skilled person to modify the prior art to achieve Applicant's claimed invention (see *In re Dance*, 48 USPQ2d 1635 (Fed. Cir. 1998)). Ohba itself provides no motivation to be modified in the manner suggested by the Examiner to achieve Applicant's claimed invention. A cited prior art reference that does not disclose any such motivation is merely inviting unguided and speculative experimentation, which is not the standard with which obviousness is determined (see *Amgen Inc. v. Chugai Pharmaceutical Co.*, 18 USPQ2d 1016 (Fed. Cir. 1991); *In re Laskowski*, 10 USPQ2d 1397 (Fed. Cir. 1989); *In re Dow Chemical Co.*, 5 USPQ2d 1529 (Fed. Cir. 1988); and MPEP § 2142).

In view of the above, Applicant submits that amended claim 1, and claims 2 to 5 depending therefrom, are patentable pursuant to 35 U.S.C. § 103. Independent claim 6 likewise include the above-described feature of a back-off mechanism. Hence claim 6, and claims 7 to 9 depending therefrom, are also patentable pursuant to 35 U.S.C. § 103.

For at least the above reasons, Applicant respectfully submits that all rejections under 35 U.S.C. § 103(a) and 35 U.S.C. § 102(e) are traversed.

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Other Claim Amendments

Examiner objected that claim 8 is improper for missing a period. Applicant herein amends claim 8 to include a period at the end of the claim.

Claim 1 is amended to enter a grammatical correction and to clarify aspects relating to the above described feature of a back-off mechanism.

Applicant herein adds new claims 12 to 22. Such claims are directed to a method of establishing a label switched path (LSP) over an MPLS routing domain established within an IP over ATM network. Independent claim 12 includes the feature of a retry timer based on a linear back off mechanism for enabling successive attempts to establish the LSP at increasing retry intervals. This feature of a back-off mechanism, as discussed above, is not described or suggested in the prior art. Applicant respectfully submits that new claims 12, and claims 13 to 22 depending therefrom, are patentable over the cited prior art.

35 U.S.C. § 119 and MPEP § 608.1

Applicant acknowledges the requirement under 35 U.S.C. § 119 to submit a copy of the certified foreign priority application. A certified copy of the application has been ordered, and Applicant will submit the certified copy under separate cover shortly.

Examiner objected to the specification at page 10, line 9 for containing an embedded hyperlink.. Applicant advises that it is the hyperlink itself, rather than the contents of the web-site referred to in the hyperlink, that is to be included in the present application. Applicant does not intend that the hyperlink be an active link. Pursuant to MPEP § 608.01, Applicant requests that the hyperlink be disabled when preparing the text of the application for loading onto the PTO web database. Applicant thus respectfully traverses the objection to the specification.

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No new subject matter is added with the present amendments. Applicant respectfully submits that all rejections in the Action of August 10, 2005 are traversed, and that the application is in condition for allowance. Examiner is invited to contact the undersigned to discuss this matter further, if necessary.

<p><u>November 10, 2005</u> Date</p>	<p>Respectfully submitted  <hr/> Robert H. Nakano (Registration No. 46,498) McCarthy Tétrault LLP Box 48, Toronto Dominion Bank Tower Suite 4700, 66 Wellington Street West Toronto, Ontario M5K 1E6 Canada Telephone: (416) 601-7852 Facsimile: (416) 868-0673</p>
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